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F.2d 1159, 1162 & n. 3 (7th Cir. 1990)[*"the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim for relief on the legal rights or interests of third parties."*](emphasis added); see, e.g., Tse-Ming Cheung v. Youth Orchestra Foundation of Buffalo, 906 F.2d 59, 60-61 (2nd Cir. 1990) [pro se litigant may not represent a minor in a civil action]; Knox ex rel. Chambers v. Hayward Unified School District, 1995 U.S. Dist. LEXIS 8379, 1995 WL 364156 (N.D. Cal., June 1, 1995)[*"A non-attorney parent must be represented by counsel when bringing an action on behalf of a child."*] (collecting cases). Indeed, the Defendant filed a motion for summary judgment based on Plaintiff's lack of counsel in this case.¹

However, although a pro se litigant cannot generally represent third parties in a lawsuit, there are some exceptions to this rule. One such exception appears to be estate executors where there are no creditors or other beneficiaries. The Fourth Circuit in an unpublished decision followed the Second Circuit in Pridgen and the Sixth Circuit in Shepherd v. Wellman² *"that the personal representative of an estate cannot represent the estate pro se if there are other beneficiaries or creditors involved."* See Witherspoon v. Jeffords Agency, Inc., 88 Fed.Appx. 659 at **1 (4th Cir. Mar. 1, 2004)[remanding the matter for further proceedings to ascertain whether there are any creditors involved]; see also Berrias v. New York City Housing Authority, 564 F.3d 130, 133 (2d Cir. 2009)(citing Pridgen, 113 F.3d at 393). Accordingly, in order to determine whether Mary Whittelsey can appear on behalf of the estate of Sarah Whittelsey, pro se, the Court directed Mary Whittelsey to answer special interrogatories addressing this issue. See Order filed June 16, 2009

¹In its motion, Defendant seeks dismissal of the case with prejudice. However, it is difficult to discern how the action could be considered for dismissal, with prejudice, since Defendant's argument is based upon Mary Whittelsey's lack of standing.

²313 F.3d 963, 970-971 (6th Cir. 2002).

(Court Docket No. 81).

However, notwithstanding the specific instructions as set forth in the Court's Order of June 16, 2009, Mary Whittelsey failed to respond to the Court's Special Interrogatories or to respond to the Order in any way. In light of the fact that Mary Whittelsey is not represented by counsel, the undersigned then entered a second Order on July 8, 2009 granting Mary Whittelsey an additional ten (10) days in which to file a response to the Court's Special Interrogatories. Whittelsey was further specifically advised in that Order that if she failed to respond, this action would be recommended for dismissal without prejudice for lack of standing. Pridgen, 113 F.3d at 392-393; Ballard v. Carlson, 882 F.2d 93, 95-96 (4th Cir.1989) [holding that district court's dismissal of case following an explicit and reasonable warning was not an abuse of discretion]. This additional time period has now also expired, with Mary Whittelsey again having failed to respond to the Court's Orders or to the Special Interrogatories.

Conclusion

Based on the foregoing, it is recommended that this case be dismissed, without prejudice, for lack of standing. Pridgen, 113 F. 3d at 392-393; Estate of Kerner, 895 F.2d at 1162 n. 3; Knox ex rel. Chambers, 1995 WL 364156; Ballard, 882 F.2d at 95-96.

The parties are referred to the notice page attached hereto.



Bristow Marchant
United States Magistrate Judge

July 20, 2009
Charleston, South Carolin



Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
P.O. Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).